

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>CARL H. FISCHER,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 10 - 7349</b>
	:	
<b>TERRENCE J. MULLEN and KATHRYN</b>	:	
<b>MULLEN, husband and wife,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
	:	

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**O R D E R**

AND NOW, this 13th day of July, 2011, upon consideration of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) (Document No. 10, filed April 4, 2011), Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss the Amended Complaint (Document No. 11, filed May 2, 2011), and Reply Brief in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) (Document No. 12, filed May, 13, 2011), for the reasons set forth in the Memorandum dated July 13, 2011, **IT IS ORDERED** that defendants' Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) is **DENIED WITHOUT PREJUDICE** to defendants' right to raise the issue addressed in the motion again after the completion of discovery via motion for summary judgment or at trial.

**IT IS FURTHER ORDERED** that a preliminary pretrial conference will be scheduled in due course.

**BY THE COURT:**

/s/ Hon. Jan E. DuBois  
**JAN E. DUBOIS, J.**